In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 558

ALASKA PACKERS ASSOCIATION (A CORPORATION), PETITIONER

v.

WARREN H. PILLSBURY, AS DEPUTY COMMISSIONER OF THE THIRTEENTH COMPENSATION DISTRICT UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT, AND FRANK WEIDEMANN

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR RESPONDENT WARREN H. PILLSBURY, DEPUTY COMMISSIONER

Respondent Pillsbury does not oppose the granting of the writ of certiorari in this case.

The decision of the court below with respect to the motion to dismiss (R. 260–269) interprets Section 8 (c) of the Judiciary Act of 1925 (c. 229, 43 Stat. 939, 940; U. S. C., Title 28, Sec. 230), in a way which conflicts with decisions in other circuits cited at pp. 12–13 of the petition.

It is true that with respect to respondent Pillsbury two orders were signed by the District Judge (R. 243, 250–251) which we believe are sufficient to constitute the allowance of an appeal under cases cited at page 22 of the petition. Those cases were, however, decided under a different statute, and the orders there involved were not precisely the same as the ones here in question. Moreover, even if the orders constitute the allowance of respondent Pillsbury's appeal, the further question of summons and severance arises, for no similar orders were entered with respect to respondent Weidemann's appeal. Although we believe that summons and severance are unnecessary because of the independent basis for action allowed the deputy commissioner by the statute (Secs. 21 (c), 22, U. S. C., Title 33, Secs. 921 (c), 922, *infra*, pp. 4–7), nevertheless we have been unable to find any case in which the question has been decided.

Respondent Pillsbury also does not oppose the granting of certiorari to review the decision of the court below reversing the order of the District Court. The question upon which the court below divided—that of the finality of a decision on jurisdiction with respect to a later award in the same case—and the procedural question upon which all members of the court below agreed—that of the efficacy of a petition for rehearing of the commissioner's award to extend the time for filing a bill in the District Court questioning that award—are impor-

tant questions under a national statute which have not been, but should be, decided by this Court.

Respectfully submitted.

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JANUARY 1937.

U. S. GOVERNMENT PRINTING OFFICE: 1938

APPENDIX

STATUTES INVOLVED

Section 19 (e) of the Act (U. S. C., Title 33, Section 919 (e)) reads:

> The order rejecting the claim or making the award (referred to in this chapter as a compensation order) shall be filed in the office of the deputy commissioner, and a copy thereof shall be sent by registered mail to the claimant and to the employer at the last known address of each.

Section 21 (a), (b), (c), and (d), of the Act (*Id.*, Section 921 (a), (b), (c), and (d)) reads as follows:

> *Review of compensation orders.*—(a) A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 919 of this chapter, and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter.
>
> (b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district in which the injury occurred (or in the Supreme Court of the Dis-

trict of Columbia if the injury occurred in the District). The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless upon application for an interlocutory injunction the court, on hearing, after not less than three days' notice to the parties in interest and the deputy commissioner, allows the stay of such payments, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the court allowing any such stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that such irreparable damage would result to the employer, and specifying the nature of the damage.

(c) If any employer or his officers or agents fails to comply with a compensation order making an award that has become final, any beneficiary of such award or the deputy commissioner making the order may apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the Supreme Court of the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such employer or his officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

(d) Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and section 918 of this chapter.

Section 22, as it read at the times herein concerned is (c. 509, 44 Stat. 1437):

SEC. 22. Upon his own initiative, or upon application of any party in interest, on the ground of a change in conditions, the deputy commissioner may at any time during the term of an award and after the compensation order in respect of such award has become final, review such order in accordance with the procedure prescribed in respect of claims in section 19, and in accordance with such section issue a new compensation order which may terminate, continue, increase, or decrease such compensation. Such new order shall not affect any compensation paid under authority of the prior order.

As enlarged by the later Act of May 26, 1934, Section 22 now reads (U. S. C., Title 33, Section 922):

Modification of awards.—Upon his own initiative, or upon the application of any party in interest, on the ground of a change in conditions or because of a mistake in a determination of fact by the deputy commissioner, the deputy commissioner may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, review a compensation case in accordance with the procedure prescribed in respect of claims in section 919 of this chapter, and in

accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury, and if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation, in such manner and by such method as may be determined by the deputy commissioner with the approval of the commission.

The Act of May 4, 1928 (U. S. C., Title 33, Section 921a), reads:

Appearance of United States district attorney for Commission or deputy commissioner.—In any court proceedings under section 921 of this title or other provisions of this chapter, it shall be the duty of the district attorney of the United States in the judicial district in which the case is pending to appear as attorney or counsel on behalf of the United States Employees' Compensation Commission or its deputy commissioner when either is a party to the case or interested, and to represent such commission or deputy in any court in which such case may be carried on appeal.

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